

AT-ATW

I hereby certify that this correspondence is being filed by
First Class Mail, postage prepaid, to the Commissioner of Patents
P.O. Box 1450, Alexandria, VA 20313-1450

Signature Isabel R. Lincoln

Date signed: November 20, 2009

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF:	Guenther Heinz)	
)	Examiner:
FILED:	01/02/2002)	Kruer, Stefan
SERIAL NO:	10/037,427)	Cuomo, Peter, SPE
DOCKET:	B01-085A)	Art Unit: 3654
FOR:	Lift Belt and System)	

REBUTTAL BRIEF UNDER 37 CFR §41.71

Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Appellants timely filed a Notice of Appeal for the above identified application on April 9, 2009, appealing the final rejection of claims 1-26, 28-31, 33-38 and 43-45. Under 37 CFR §41.37, Appellants submitted the Appeal Brief dated 8 June 2009 to the Board of Patent Appeals and Interferences (Board). This Rebuttal Brief is timely submitted within one month of the Examiner's Answer mailed October 28, 2009. Please charge any fees for filing this Rebuttal Brief to assignee's deposit account no. 07-0475, in the name of Gates Corporation.

(i) Real Party in Interest

No changes from Appeal Brief.

(ii) Related Appeals and Interferences

No changes from Appeal Brief.

(iii) Status of Claims

No changes from Appeal Brief.

(iv) Status of Amendments

No changes from Appeal Brief.

(v) Summary of the Claimed Subject Matter

No changes from Appeal Brief.

(vi) Grounds of Rejection to be Reviewed on Appeal

No changes from Appeal Brief.

(vii) Argument

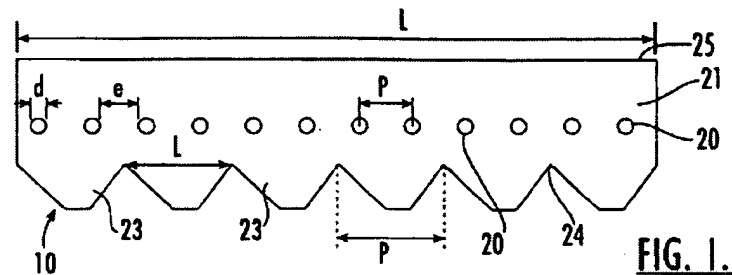
I. THE EXAMINER HAS FAILED TO ESTABLISH A *PRIMA FACIE* CASE OF OBVIOUSNESS UNDER 35 USC §103(a) OF EACH OF THE REJECTED CLAIMS 1-26, 28-31, 33-38 and 43-45.

As regards claims 1, 13 and 26, Appellants suggest that the Examiner has illuminated the two central issues of this appeal which Appellants address in turn. Otherwise, Appellants rely upon the Appeal Brief. First, the Examiner relies on improperly scaling the figures of Winninger, and second, the Examiner attributes teachings to Conrad which are inconsistent with the application specification.

1. THE EXAMINER IMPROPERLY RELIES UPON SCALING THE WINNINGER ET AL. FIGURES.

The Examiner argues in the Answer in part: “Winninger et al depict their belt having ribbed profile of approximately 90° to engage a pulley profile to enhance harmonic filtering...” (emphasis added), see Answer page 5, claim 1, and Answer page 10, claim 26. Respectfully, Winninger offers no such teaching and use of the word “depict” is a clear reference to the figures since the Winninger specification teaches otherwise. Simply, no dimensions are provided in any Winninger figure. As noted in the Appeal Brief, a close inspection of Winninger Fig. 1 shows each rib (23) as being skewed to one side with one side of each rib (left) being slightly longer than the

other side (right) further demonstrating its unreliability for the purpose advanced by the Examiner.



The prohibition against scaling drawings was discussed during the Interview, and was also addressed in prior Arguments, including the Argument dated October 19, 2007 which is included in the Evidence Appendix to the Appeal Brief. Reliance on scaling the figures in Winner to teach the claimed rib angle is clearly contrary to settled law, and the Examiner offers no support to the contrary.

Nor does the Examiner offer a specific column and line citation to Winner to support the proposition that Winner teaches a 90° rib angle. In fact the Examiner is silent as to the specific figure being ostensibly cited, instead only referring specifically to ISO 9981 which teaches a rib angle of 40°, see Appeal Brief page 23, and Answer page 5 and page 10. On page 12 of the Answer the Examiner argues that the teachings of Winner are “moot” because the Examiner argues earlier in the Answer (pg. 10) that Winner “depicts” the disputed rib angle.

Respectfully, absent specific references within Winninger the Examiner's argument is reduced to scaling the figures. Hence, the Examiner's argument still fails under In Re Olson, 41 CCPA 871, 212 F.2d 590 (1954), wherein the court observed:

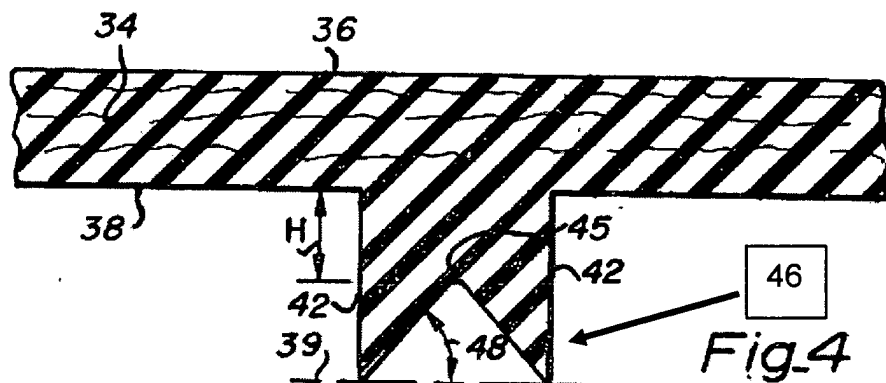
"It is well known that Patent Office drawings are not normally drawn to scale, with the dimensions and sizes of parts shown to exact measurements as are shop drawings." The court refused to allow "scaling any particular distances or sizes ... *when the specification is completely silent in this respect.*" (emphasis added) Appeal Brief, footnote 1, page 22.

2. THE EXAMINER ATTRIBUTES TEACHINGS TO CONRAD WHICH ARE INCONSISTENT WITH THE APPLICATION SPECIFICATION.

The Examiner argues in part that "Conrad teaches a ribbed profile having a rib angle with an angle of approximately 90° for the features of maintaining...", see Answer page 5, claim 1, and Answer page 10, claim 26 . Conrad is offered as a secondary reference to a primary reference both which fail to teach the claimed 90° rib angle.

Appellants acknowledge the Examiner's construction placed upon the Conrad notch at the bottom of rectangular rib 40, namely that a total included angle comprises 90°, however, this is not the full extent of the issue. As noted in the Appeal Brief the Examiner fails to read the claim in a manner consistent with the specification, more

particularly, the notch of Conrad does not equate to a rib. Although the defects of the Conrad reference are fully set forth in the Appeal Brief, for ease of reference Fig. 4 of Conrad is produced below.



Angle 48 and apex 45 only relate to a “concavity” of the bottom of a rectangular rib 40, see Conrad 3:15. In effect, angle 48 of Conrad describes a longitudinal notch in an overall rectangular rib 40, see Conrad 3:24. Sides 42 of rib 40 are parallel and so cannot describe a rib angle since parallel lines do not converge by definition.

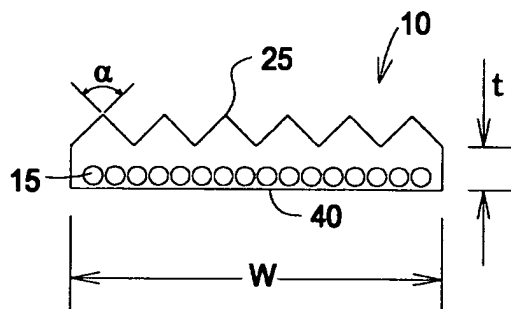


FIG.1

Referring to Figure 1 in the application (above), the angle “ α ” relates to the relationship between the belt rib sides which sides diverge toward the belt tensile cords 15. The ribs claimed in the present invention do not comprise a “concavity” or notch, nor do they comprise an angle with respect to a concavity or notch in a rib. Read in a manner consistent with the specification Conrad simply teaches a portion of a rib having an angle of 45° , namely, a rib tip (46), see Figure 2 (Appeal Brief page 26) and Figure 4 above (tip 46 added to Figure 4 for ease of reference).

II. IN THE EVENT THE BOARD BELIEVES THAT THE EXAMINER HAS MADE OUT A *PRIMA FACIE* CASE OF OBVIOUSNESS, THAT *PRIMA FACIE* CASE HAS BEEN REBUTTED SINCE THERE IS NO TEACHING, SUGGESTION, MOTIVATION OR APPARENT REASON TO COMBINE WINNINGER and CONRAD IN THE FASHION ADVANCED BY THE EXAMINER.

In this case the Examiner cites a single reference, Winninger et al., as the primary reference in support of all of the rejections under 35 USC §103(a). However, as argued in this Rebuttal and the Appeal Brief both Winninger and Conrad have a fatal defect; neither teaches nor suggests the 90° rib angle attributed to it by the Examiner. During the Interview at the USPTO the Examiner and SPE each agreed the belt rib angle of approximately 90° is not taught by Winninger.

Therefore, Appellant respectfully argues that the Examiner is redesigning the clear teachings of Winner and Conrad contrary to established law to create that which does not exist, namely, art which teaches or suggests a belt having a rib with a rib angle of approximately 90°.

In light of the foregoing, it is submitted that the Examiner has failed to meet his burden of establishing a *prima facie* case of obviousness in this case. Even if the Board believes a *prima facie* case has been made out, although Appellants strongly contends to the contrary, it is submitted that Appellants have rebutted the *prima facie* case. The Board is requested to reverse the rejection of claims 1-26, 28-31, 33-38 and 43-45 under 35 USC §103(a).

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Jeffrey Thurnau".

Jeffrey Thurnau
Attorney for Appellants
Reg. No. 42,183
Telephone: (303) 744-4743

Denver, Colorado

Dated: Nov. 20, 2009